

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Violations of Articles  
17 & 27 of the New York State Environmental  
Conservation Law (ECL), Article 12 of the  
New York State Navigation Law (NL), and the  
accompanying provisions of the Official  
Compilation of Codes, Rules and  
Regulations of the State of New York  
(NYCRR)

ORDER ON  
CONSENT

-by-

BCF OIL REFINING, INC.,

Respondent.

DEC File Nos.  
R2-3307-90-11  
R2-2653-89-11  
R2-2855-90-03  
R2-3028-90-05

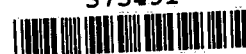
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WHEREAS:

1. The Department of Environmental Conservation ("DEC") is a Department of the State of New York with jurisdiction to enforce the environmental laws of the State, pursuant to §3-0302 of the Environmental Conservation Law ("ECL").

2. Respondent BCF Oil Refining, Inc. ("BCF") is a New York corporation maintaining a place of business at 360-362 Maspeth Avenue, Brooklyn, NY 11211. It maintains a solid waste management facility at that location, accepting waste oil for storage, reprocessing, or re-refining (the "facility").

A. Solid Waste Management Law

3. Pursuant to Article 27 of the ECL and Parts 360 and 621 of Title 6 of the New York Codes, Rules, and Regulations (NYCRR), DEC is responsible for regulating the construction and operation of solid waste management facilities including, but not limited to,



waste oil storage, reprocessing and re-refining facilities in the State of New York, and issuing permits for such construction and operation.

4. ECL §27-0707 and 6 NYCRR Subparts 360-1 and 360-14 prohibit the construction or operation of a waste oil storage, reprocessing and re-refining facility without first having obtained a permit from the DEC.

5. Respondent operated the facility from May 9, 1986 until the present without the required permits specified in paragraph 4, above, or any other DEC operating authority, although Respondent did so in the good faith, if incorrect, belief that it had such authority by virtue of the filing and pendency of an application for the renewal of the operating permit issued to Respondent's predecessor at interest.

6. Pursuant to ECL §71-2703, violation of the laws and regulations governing waste oil management, or violation of a consent order designed to remedy such violations, subjects the violator to a civil penalty of up to \$2,500 for each violation and an additional penalty of \$1,000 for each day the violation continues, as well as to possible criminal and injunctive relief.

7. Since entering into negotiations with DEC in order to resolve DEC's outstanding claims, respondent has provided additional information designed to complete its new permit application under Part 360, which it agrees to pursue diligently in order to obtain a permit.

B. State Pollutant Discharge Elimination System Permit

8. DEC has jurisdiction over the abatement and prevention of pollution of waters of the State pursuant to §17-0303 of the ECL. As part of this jurisdiction, DEC issues permits for the discharge of limited amounts of pollutants in to State waters, pursuant to the State Pollutant Discharge Elimination System ("SPDES") program described in ECL Article 17, Title 8.

9. DEC issued SPDES permit No. NY0036609 to Respondent's predecessor at interest, to authorize it to discharge certain limited pollutants in the manner described in that permit. This permit is currently in effect.

10. An investigation by DEC into BCF's operations showed that Respondent violated §17-0813 of the ECL and 6 NYCRR Part 754.3 by exceeding the limitations specified in its SPDES permit for total zinc, and total copper, on three different occasions, collectively.

11. Pursuant to ECL §71-1929, violations of Article 17 and applicable permit provisions and regulations are punishable by a penalty of Twenty Five Thousand (\$25,000.00) Dollars for each day of each violation.

C. Major Oil Storage Facility Licensing

12. DEC is responsible for the licensing of major onshore petroleum storage facilities and the collection of monthly license reports and monthly license fees pursuant to Article 12 of the New York State Navigation Law ("NL") and Parts 610 and 611 of Title 6

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and Parts 30 and 31 of Title 17 of the Official Compilation of the Codes, Rules and Regulations of the State of New York (NYCRR).

13. Respondent's facility contains more than 400,000 gallons of tanks, piping and other storage capacity, meaning that this facility is a major onshore petroleum storage facility ("MOSF"), as that term is defined in NL Article 12.

14. NL §174.1 requires that all owners or operators of a MOSF obtain a license from the Department. This requirement is designed to assure that operators follow standards that will tend to prevent the improper discharge of petroleum, and to provide for its prompt containment and cleanup if improperly discharged.

15. NL §174.5 requires that owners or operators of MOSFs file a monthly report with the Department certifying the number of barrels of petroleum transferred to the facility during the proceeding month. With each monthly report, the owner or operator must submit a monthly license fee based on the number of barrels of petroleum transferred to the facility.

16. Respondent has in the past operated the facility as a MOSF without having obtained the required licenses, filing the needed safety plans and reports, or paying the mandated licensing fees, although Respondent conducted such operation in the good faith belief, based on communications with the Department of Transportation, that no MOSF license was required, and although BCF applied for such license on December 9, 1987, promptly on being informed by DEC that it was required. On March 12, 1991, BCF

submitted an updated MOSF application, in its continuing effort to comply with Article 12.

17. Each violation of Article 12 of the New York State Navigation Law is punishable by a civil penalty not to exceed Twenty-Five Thousand (\$25,000.00) Dollars per day of each such violation, pursuant to Navigation Law Section 192.

D. Respondents' Consent To This Order

18. Respondent has indicated that it seeks to comply in full with Articles 17 and 27, and Navigation Law Article 12, and is willing to pay certain penalties as part of a settlement of DEC's claims based on the facts recited above. Respondent affirmatively waives its rights to notice and hearing in the manner provided by law and consents to the issuance and entry of this Order and agrees to be bound by the terms, provisions, and conditions herein.

THEREFORE, BY AUTHORITY OF THE COMMISSIONER OF THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, IT IS HEREBY ORDERED:

1. Monetary Penalties

I. Respondent immediately shall pay a civil penalty in the amount of ten thousand (\$10,000.00) dollars, by certified check, to the New York Environmental Protection and Spill Compensation Fund, pursuant to Navigation Law Section 192.

II. Respondent shall pay a civil penalty in the amount of thirty thousand (\$30,000.00) dollars, pursuant to ECL Section

71-2703. Of this penalty, fifteen thousand dollars (\$15,000) shall be paid immediately by Respondent by certified check, to the New York State Department of Environmental Conservation. Respondent shall pay the remaining fifteen thousand (\$15,000) penalty on or before October 15, 1991, by certified check, to the New York State Department of Environmental Conservation. Respondent's obligation to make this latter payment shall be secured, within 15 days of the date of this order, by a commercially-acceptable bank letter of credit naming DEC as beneficiary.

IV. Respondents shall pay, by certified check payable to DEC, the sum of Ten Thousand (\$10,000) Dollars for use in a DEC-managed environmental compliance monitor program. This payment shall be made by July 15, 1991, and shall be secured, within 15 days of the date of this order, by a commercially-acceptable bank letter of credit naming DEC as beneficiary. All monitors hired by DEC under this program shall be responsible for the oversight of solid waste management facilities operating with permits or under Consent Orders in New York City.

## 2. Solid Waste Permit Compliance

V. This Order is not a permit. However, this Order constitutes temporary authorization for Respondent to operate the facility as a waste oil storage, reprocessing and re-refining facility, as defined in 6 NYCRR Subparts 360-1 and 360-14, for a period of one hundred and twenty (120) days from the effective date

of the Order.

VI. The temporary authority to operate shall expire automatically at the end of the 120-day period unless DEC agrees in writing to renew it. DEC shall not renew the temporary authority to operate unless Respondents take all reasonable and necessary measures to further their Part 360 permit application of March 12, 1991. Such measures may include the submission of additional information requested by DEC Staff. For its part, DEC staff shall promptly process Respondent's Part 360 permit application of March 12, 1991, and if that application is incomplete in any respect, DEC staff shall notify Respondent within 20 days of the date of this order as to what information is missing.

VII. The temporary authority to operate set forth in Paragraph V above is contingent upon Respondent's full substantive compliance with the terms, conditions, and provisions of this Order; Compliance Schedule A; 6 NYCRR Part 360; and the ECL. Subject to the Provisions of this Paragraph, Respondent's failure to so comply shall constitute a default and violation of this Order, which will subject Respondent to the following penalties, without further administrative adjudication:

a) First Violation Occurring After the Date of This Consent Order: a \$2,500 penalty;

b) Any Subsequent Violation Occurring After the Date of This Consent Order: revocation of the temporary authority to operate and closure of the facility until the violation is adjudicated and a permit is granted.

The facility must be closed or the monetary penalty must be paid to

DEC within seven days after DEC notifies the Respondents of the violation(s), provided that nothing contained herein is intended, or shall be construed to interfere with Respondent's right, pursuant to CPLR Article 78, or any other applicable provision of law, to challenge any determination by DEC to invoke the provisions of this Paragraph (or to invoke any other provision of this Consent Order) and to seek a temporary restraining order and/or a preliminary injunction pending the hearing and final determination of any such challenge. In order to be effective, the notification of violation referred to in this Paragraph shall take the form of an affidavit or affirmation written under penalty of perjury by a DEC employee describing the violation(s) and specifying the penalty or penalties imposed. Such notification shall be sufficient if it is sent by hand to Julian Friedman, Esq., of Stillman, Friedman & Shaw, P.C., 425 Park Avenue, New York, NY 10022, or other agent designated by Respondent.

VIII. If, for any reason, the temporary authority lapses or is revoked subject to the terms and conditions of this Order, and such lapse or revocation is not stayed or enjoined by the order of any court having jurisdiction over the matter, Respondent must immediately cease operating the facility. It shall not accept any more solid waste at the facility and shall remove all solid waste from the facility as soon as practicable in a manner acceptable to DEC. If the use of the facility is discontinued for a period of more than 90 days, respondent must close it in the manner provided



for in Part 360 and acceptable to DEC.

IX. All reports and submissions required pursuant to this portion of this Order shall be made to Region II, New York State Department of Environmental Conservation, 47-40 21st Street, Long Island City, New York 11101, Attn: Solid Waste Management Engineer Richard Bruzzzone, with a copy to Regional Attorney Paul Gallay, except that information which is required as part of a permit application shall be directed to the Regional Permit Administrator, Region II at that same address.

### 3. Major Oil Storage Facility Permitting

X. Respondent shall work diligently to complete its MOSF permit application. Within 30 days of receiving Notice from DEC that their MOSF application is incomplete for any reason, Respondents shall submit to DEC all the data required to comprise a complete permit application.

XI. If required under any MOSF permit granted by DEC, respondent shall submit to DEC a proposal for the installation of a sufficient number of monitoring wells for groundwater monitoring at the facility and respondent shall commence the installation of groundwater monitoring wells at the site within 30 days (or other such time provided for in the permit) of its approval by DEC, and shall complete the installation of these wells according to the schedule established in the Permit. This obligation shall be subject to the expiration of any right of Respondent to any

administrative appeal.

XII. All reports and submissions required pursuant to Navigation Law Article 12 shall be made to the Region 2, New York State Department of Environmental Conservation, 47-40 21st Street, Long Island City, NY 11101, Division of Water, Attn: Mr. Anthony Sigona, Environmental Engineer I. A copy of all covering memoranda or letters concerning documents sent to Mr. Sigona shall be sent to Paul Gallay, DEC Region II Regional Attorney, at the same address.

#### 4. Compliance With SPDES Permit

XIII. Respondent shall hereafter comply with, and take such steps as may be necessary to bring its operation into full compliance with, ECL Article 17, 6 NYCRR Parts 700, et seq, and SPDES Permit # NY0036609. Failure to so comply will subject respondents to a stipulated penalty of Five Thousand (\$5,000) Dollars for each additional individual violation.

#### 5. General Terms

XIV. Respondent shall allow duly authorized representatives of the DEC access to the facility and subject property without prior notice, at such times as may be desirable or necessary in order for DEC to inspect and determine the status of Respondent's compliance with this Order.

XV. Compliance with all material terms of this Order shall satisfy respondent's outstanding liability for the violations.

described above. Respondent's failure to so comply will subject it to additional penalties, both for past and future violations. DEC represents that it has no present knowledge of any past ECL violations involving the Facility other than those set forth in this Consent Order.

XVI. If the facility or subject property is sold, leased, or otherwise conveyed or transferred, the contract of conveyance shall impose on the transferee the obligation to comply with the terms of this Order. Within thirty (30) days after such conveyance or transfer, Respondent shall submit to DEC a copy of the contract of conveyance or transfer. This order shall not authorize operation by any transferee or other successor unless that person verifies to DEC in writing by certified letter that he is in complete compliance with the terms of this order.

XVII. Nothing in this Order shall relieve Respondent of the obligation of paying any fees (for permits or otherwise) which may be due the DEC or any other governmental agency.

XVIII. Respondent shall comply with all applicable Federal, State, and Local Laws, Rules, and Regulations.

XIX. Respondent must obtain all other necessary Federal, State, and City approvals.

XX. Respondent shall indemnify and hold harmless New York State, DEC, and any of their employees or contractors for all claims, actions, damages, and costs resulting from Respondent's intentional wrongdoing or negligence.

XXI. DEC reserves the right to require Respondent to take any additional measures required by applicable law or regulation to protect human health and the environment.

XXII. The effective date of this Order shall be the date upon which it is signed on behalf of DEC.

XXIII. If Respondent desire that any provision, term, or condition of this Order be changed, it shall make written application setting forth the grounds for the relief sought to the Commissioner of DEC, c/o Regional Director, New York State Department of Environmental Conservation - Region II, 47-40 21st Street, Long Island City, NY 11101.

XXIV. As long as Respondent is in full compliance with this Order, DEC will not deny or withhold the Part 364 permit of any transporter on the ground that such transporter deals with Respondent.

XXV. This Order constitutes the entire agreement of the parties, and no provision of the agreement shall be deemed waived or otherwise modified without the written consent of the parties hereto or their lawfully designated successors.

DATED: Long Island City, New York  
April , 1991

THOMAS C. JORLING, Commissioner  
New York State Department of  
Environmental Conservation

By: \_\_\_\_\_  
Carol Ash - Regional Director,  
Region II

COMPLIANCE SCHEDULE A - Solid Waste Law Permitting

In addition to all of the requirements for operation contained in this Order and the provisions of 6 NYCRR Part 360, except as otherwise provided in this Order, Respondent shall immediately adhere to the following conditions for operation:

1. Within 30 days of receiving Notice from DEC that their Part 360 application is incomplete for any reason, Respondent shall submit to DEC all the data reasonably required to comprise a complete Part 360 permit application.

2. Within 30 days, respondent shall submit its written proposed tank tightness testing program. This program shall include all necessary measures to provide for the integrity of the petroleum tanks at the facility. This program shall also incorporate the by-tank testing timetable proposed in the letter of Julian W. Friedman, Esq. to Paul A. Gallay, dated March 20, 1991. [a copy of said timetable is annexed to this order].

3. The facility shall not receive, handle, or store any hazardous wastes, as defined under New York State law and regulation. The sole exception to this requirement is that respondents may handle oil that has a flashpoint above 110 degrees fahrenheit, as that minimum temperature is consistent with both Federal Regulations for non-hazardous materials, and proposed State regulations for waste oil facilities.

4. Any hazardous waste that is received at the facility

shall be adequately segregated and secured. Within 72 hours of such receipt, such material shall be removed, provided that this period shall be extended in the event Respondent, after making diligent efforts, is unable to secure the removal of such material, and notifies DEC of the presence of said material, its content, the efforts made by Respondent to secure its removal, and the proposed timetable for removal. If required by State law, such material shall be removed by a waste transporter permitted to handle such material pursuant to 6 NYCRR Part 364.

5. Respondent shall keep a daily log, listing the materials brought into the facility. The log shall indicate, for each type of material, the quantity (in gallons), and the names and addresses of all transporters of all waste received. Respondent shall submit a monthly log summarizing these daily logs, by the fifth day of the succeeding month, to Mr. Richard Bruzzone, the Solid Waste Engineer at DEC Region II. Respondent shall maintain the daily logs for seven years and shall make the daily logs available to DEC at respondent's premises immediately upon request. Respondent shall similarly maintain for seven years and similarly make available to DEC its ticket manifests for all materials removed from the facility.

6. Respondent shall control odors, noise, vectors, and dust, so that they do not constitute a nuisance or hazard to public health, safety, welfare or property.

7. Within 30 days of their execution of this order,

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Respondent shall provide or maintain a commercially-acceptable compliance bond or letter of credit, with a copy to DEC, in the amount of \$175,000 to ensure proper and adequate maintenance and closure of the site and payment of all penalties.

8. This Order, all documents referenced herein, and all DEC-accepted modifications to this Order and such documents shall be kept on hand at the facility and shall be available for inspection by any authorized representative of DEC whenever the facility is open.

9. Effective immediately, trucks owned or controlled by respondent that come into and leave the site shall use only truck routes established by New York City as ingress and egress from the site. Independent truckers who use the site shall be advised in writing by Respondent to use only the established truck routes and respondent shall not do business with truckers whom Respondent learns have failed to comply with this requirement.

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CONSENT BY BCF OIL REFINING, INC.

Respondent hereby consents to the issuance and entry of the foregoing Order without further notice, waives its right to a hearing herein, and agrees to be bound by the provisions hereof.

BCF Oil Refining, Inc.

BY: \_\_\_\_\_  
Title: \_\_\_\_\_

DATE: \_\_\_\_\_

CORPORATE ACKNOWLEDGEMENT

State of New York: County of \_\_\_\_\_ ) ss.:

On this \_\_\_\_\_ day of \_\_\_\_\_ 1991, before me personally came \_\_\_\_\_, to me known, who being duly sworn, deposed and stated that he resides at \_\_\_\_\_ that he is the \_\_\_\_\_ of BCF OIL REFINING, INC., the Corporation described in and which executed the foregoing instrument, and that he was authorized by said Corporation to execute the foregoing instrument.

\_\_\_\_\_  
Notary Public